

**EXHIBIT G**

Transcript of Franks argument Decision.txt

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1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

2 UNITED STATES OF AMERICA, New York, N.Y.

3

3 v. 05 Cr. 621(KMK)

4

4 ALBERTO VILAR

5 GARY TANAKA,

5

6 Defendants.

6 -----x

7

7 October 25, 2006

8

8 1:42 p.m.

9

9 Before:

10

10 HON. KENNETH M. KARAS,

11

11 District Judge

12

12

13 APPEARANCES

13

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14 United States Attorney for the

15 Southern District of New York

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23 - and -

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18 anybody looking at the papers would reasonably think that.  
19 THE COURT: One thing that wasn't clear from the  
20 briefing is all of these letters that were attached as exhibits  
21 to your affidavit, were these things that Inspector Fraterrigo  
22 had beforehand or are these things came about as a result of  
23 the search?

24 MR. LITT: No, these were in our possession  
25 beforehand.

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1 THE COURT: Beforehand.  
2 There is at least, though -- I know that some of the  
3 exhibits that were attached to Ms. Margolis' affidavit were  
4 items that were found in the UK search. But every single one  
5 of the letters that you cited were available to Inspector  
6 Fraterrigo before she went to Judge Maas to get the search  
7 warrant, or at least some significant quantity of them?

8 MR. LITT: A very significant quantity, yes.

9 THE COURT: You are not sure which ones were not  
10 available.

11 MR. LITT: Without going back and looking at it and  
12 itemizing it, I can't say that off the cuff.

13 THE COURT: Presumably part of Inspector Fraterrigo's  
14 discussion with Ms. Cates and Ms. Mayer related to the contents  
15 of these letters, I take it. Is that a fair assessment?

16 MR. LITT: Certainly the correspondence that they had  
17 with the principals, yes. I can't say that she talked to them  
18 about every single letter that I have cited, but --

19 THE COURT: No, I understand.

20 MR. LITT: -- the back and forth, yes.

21 THE COURT: And the notion is that she is trying to  
22 find out what it is that each individual invested in and the  
23 nature of the fraud that may have -- they may have suffered  
24 from, is that right?

25 MR. LITT: That was certainly something that she was

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1 interested in, yes.

2 THE COURT: In paragraph 6(b) of Inspector  
3 Fraterrigo's affidavit, it is alleged as follows: "Lilly  
4 Cates, who is 'the victim,'" in quotes -- I am at page four of  
5 the affidavit -- "described in the Vilar criminal complaint,  
6 described to me an investment of \$1 million that she made in or  
7 about 1988 in an entity called Rhodes Capital. She received a  
8 stock certificate for two shares of stock which was signed by  
9 Vilar and Tanaka. Although her account statements, which she

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10 received up until approximately 2002, reflected growth in the  
11 Rhodes investment, the investment was never described to her.  
12 She never has received a private placement memorandum nor has  
13 she signed a subscription agreement for Rhodes, and her efforts  
14 to learn more about the investment were ignored or rejected by  
15 Vilar. In approximately February 2005, Cates attempted to  
16 redeem her entire investment portfolio at Amerindo, including  
17 her SBIC investment described in the Vilar criminal complaint,  
18 Rhodes, and any other investment with Amerindo, but Amerindo  
19 and Vilar refused to move her investment portfolio to Bear  
20 Stearns."

21 Breaking that down, with respect to Rhodes, the fact  
22 that she got a stock certificate and she got account statements  
23 but apparently was never -- the investment was never  
24 specifically described to her nor did she ever receive a  
25 private placement memorandum and she didn't sign a subscription

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1 agreement, what's criminal about that?

2 MR. LITT: I don't know that that is in and of itself  
3 necessarily criminal, but it is unusual for people to make  
4 large investments and for investment advisors to present  
5 clients with offerings of securities without giving them a  
6 description of the document and a subscription agreement to  
7 sign.

8 THE COURT: I understand it may be unusual, but you  
9 don't get a search warrant because of unusual conduct, right?

10 MR. LITT: Well, that -- no, you don't get a search  
11 warrant for unusual conduct standing by itself.

12 THE COURT: Of course not.

13 MR. LITT: But you get a search warrant when you have  
14 criminal conduct and unusual conduct and you have individuals  
15 that are engaging in lying to the investors, in failing to  
16 provide them information about investments that they have  
17 advised them to make.

18 THE COURT: Hold on. I just asked you what it was  
19 about the Rhodes investment, as alleged in paragraph 6(b), that  
20 is criminal, and you said it is not. So I want to make sure I  
21 am clear on this. I am trying to understand what is it, if  
22 everything that Cates says is true about Rhodes up until the  
23 point of not getting her investment redeemed, I'm just talking  
24 about not being given the details of the investment, not being  
25 given a placement memo, not signing a subscription agreement,

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1 but she is getting account statements and apparently there is



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2 some growth, whatever that means, what is it that is criminal  
3 about that?

4 MR. LITT: It is not necessary criminal, but it is  
5 certainly indicia of fraud. Those are all things that one  
6 would reasonably expect someone who is perpetrating a fraud to  
7 do.

8 THE COURT: But if all you had was Rhodes, all you had  
9 was Rhodes, do you think you have a basis to get a search  
10 warrant for anything having to do with Ms. Cates?

11 MR. LITT: Rhodes, including the fact that when she  
12 tried to transfer her investment to another brokerage house  
13 they refused, and when she tried to redeem her investment they  
14 refused? Yes.

15 THE COURT: So it's the refusal to redeem the  
16 investment that is the basis for suggesting that there is a  
17 crime committed here, is that right?

18 MR. LITT: With respect to Rhodes?

19 THE COURT: With respect to Rhodes. Up until there is  
20 no redemption, there is no criminal conduct with respect to  
21 Rhodes. I understand SBIC. I will get to that in a minute. I  
22 am just talking about Rhodes.

23 MR. LITT: Well, there is certainly indicia that there  
24 could have been fraud in the inducement, but it is not -- if  
25 you are asking whether there is a case to be made based on

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1 what's in this paragraph for fraud in the inducement for Rhodes  
2 as a crime, the answer is no.

3 THE COURT: OK.

4 MR. LITT: But it is in -- each those pieces of  
5 evidence is powerful evidence of indicia of fraud.

6 THE COURT: I have been around long enough to know  
7 that magistrate judges review these things based on the  
8 totality of the circumstances, so I get that. I am only  
9 talking about Rhodes.

10 MR. LITT: OK.

11 THE COURT: And what makes Rhodes a crime is,  
12 according to the affidavit, the refusal allegedly of Vilar and  
13 Tanaka to redeem her investment in Rhodes in addition to the  
14 other investments. I am just talking about Rhodes. Is that  
15 right?

16 MR. LITT: Yes.

17 THE COURT: Now SBIC, I understand, is a whole  
18 different ball game, because you allege in the complaint that  
19 certain statements were made to Ms. Cates that were fraudulent  
20 in terms of whether or not there was going to be government  
21 approval for this type of investment and so on and so forth.  
22 But I'm just talking about Rhodes.

23 With respect to Ms. Mayer, which is paragraph 6(a) --

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24 MR. LITT: It's a family.  
25 THE COURT: The Mayer family, right, but it's based on  
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1 Ms. Mayer providing the information to Inspector Fraterrigo.  
2 She says: "I have spoken to Lisa Mayer."  
3 MR. LITT: Yes.  
4 THE COURT: So that's the source of the information  
5 she is about to give regarding the Mayer family investments  
6 with Amerindo, correct.  
7 MR. LITT: Yes.  
8 THE COURT: She talks about the GFRDA's, which the  
9 family invested in beginning in or about '87 and their  
10 representation about how they are absolutely safe and liquid,  
11 the bottom of page three there, that Vilar induced the Mayer  
12 family, including the father and sister, to manage much of  
13 their investment through an offshore account with PTC  
14 Management Ltd. And then in or about 2003, when the Meyers  
15 attempted to redeem approximately 12 million invested in  
16 GFRDA's, Amerindo, Vilar, Tanaka and Tanaka's wife all rebuff  
17 their efforts and refuse to release the funds. The next  
18 sentence reads: "Ms. Mayer described years of begging Vilar to  
19 release some of their investment to pay for the care of her  
20 sick father who Vilar had known for some 30 years and was one  
21 of Vilar's original investors and Vilar's rejection of those  
22 requests."

23 Now, when I read that Ms. Mayer described years of  
24 begging Vilar to release some of their investment, I'm thinking  
25 many years, over a period of a long time. I'm not thinking  
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1 back to 2003. To the extent that there are redemptions on  
2 these investments going up to, say, 2001, and there is a  
3 renewal of the investment, how is one supposed to square that  
4 fact with the statement that there were years of begging Vilar  
5 to get redemptions that were rebuffed?

6 MR. LITT: The years were from approximately 2003 to  
7 2005.

8 THE COURT: But why doesn't it say that? Why doesn't  
9 it say -- because this affidavit is sworn to in May of 2005.  
10 So the most we are talking about here is two years, right? Two  
11 years.

12 MR. LITT: Correct.

13 THE COURT: Not years. If I said to you I have been  
14 doing this job for years and then it turned out I had only been  
15 doing it for two years, which is true, I think those are very

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